



CITY OF WAUWATOSA  
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**COMMUNITY DEVELOPMENT COMMITTEE MEETING  
Tuesday, May 31, 2005**

PRESENT: Alds. Becker, Birschel, Kopischke, Krill, Krol, Subotich, Sullivan, Treis -8

ALSO N. Welch, Community Dev. Dir.; A. Kesner, City Atty.;  
PRESENT: Chief B. Weber, Lt. D. Weiss, Police Dept.

Ald. Kopischke as Chair called the meeting to order at 8:02 p.m. -7

**Proposed Rezoning – Northeast Corner of N. 124th and W. Burleigh Streets**

The committee reviewed a proposed ordinance rezoning the properties located at the northeast corner of N. 124th and W. Burleigh Streets from AA Light Manufacturing District to AA Business District. Ms. Welch reported that Briggs & Stratton plans to create a new parcel on the southern 22 acres of their manufacturing site that will be available for development as a retail site. The issues tonight are creating the parcel and rezoning it.

Michael Fox, Continental Properties, was present to answer any questions along with representatives of Briggs & Stratton and Loew's.

Moved by Ald. Treis, seconded by Ald. Krol to recommend to Council adoption of the ordinance. Ayes: 7; Present: 1 (Krill)

**Land Division – Northeast Corner of N. 124th and W. Burleigh Streets**

Ms. Welch indicated that this land division is for the aforementioned parcel that is being rezoned for proposed retail development.

Moved by Ald. Treis, seconded by Ald. Sullivan to recommend to Council approval of the land division. Ayes: 7; Present: 1 (Krill)

**Alley Vacation – Unimproved Right-of-Way South of W. Meinecke Avenue between N. 64th and N. 65th Streets**

Referring to an area map, Ms. Welch pointed out the unimproved alley right-of-way south of W. Meinecke Avenue between N. 64th and N. 65th Streets. An adjacent resident has requested the vacation. The land would be divided equally among the property owners along each side of the right-of-way.

John Rose, 2366 N. 65th Street, said he requested the vacation in order to build a retaining wall and address drainage problems. It would also make his yard more useful. This is land that he and his neighbors have been maintaining through the years.

Moved by Ald. Birschel, seconded by Ald. Krill to recommend setting a public hearing date –

Ms. Welch reported that all abutting residents have been notified and staff is following up on contacts. To date, no responses to the contrary have been received, although a couple of residents have not yet been reached.

Vote on the motion, Ayes: 8

### **Conditional Use – 6442 River Parkway**

Ms. Welch reviewed a request by Kerry Krienitz and Parkway Development LLC for a Conditional Use in the AA Light Manufacturing District at 6442 River Parkway for a dog day care and boarding facility. It would be part of a chain that operates four other facilities in the Milwaukee area. Chief concerns of staff are that the dogs are controlled on site and not allowed into Hart Park and that waste is cleaned up immediately so it does not wash into the river or storm water system.

Kerry Krienitz, 7626 Warren Avenue, said that the Plan Commission recommended a maximum capacity of 80. Staff would be present between 6 a.m. and 7:30 p.m., but not at night, which is standard practice. There is a full security system on site.

Jackie Schwanberg, 4336 Raymir Place, who is the franchise holder, said there will be heat and motion sensors. She said that she has not had any problems or complaints about noise in the eight years she has been in this business. Responding to further questions about after-hours monitoring, she said that a facility typically has multiple heating units. There would have to be multiple failures to cause a problem, and she has not encountered anything of that type in her experience.

Ald. Krol questioned this site's proximity to the new senior housing complex. Ms. Welch said there are two properties between the two sites.

Ms. Krienitz confirmed that the business would be a tenant of Parkway Development LLC. She said that overnight boarding will be offered only to day care customers, which limits the overnight numbers. Over holidays and weekends, there may be up to 20 dogs there overnight, but she estimated an overnight average of 10, depending on the customer base.

Moved by Ald. Sullivan, seconded by Ald. Krill to recommend approval of the Conditional Use with conditions as recommended by the Plan Commission: 1) hours of operation 6 a.m. to 7:30 p.m. daily, and overnight boarding; 2) enrollment of no more than 80 dogs; 3) appropriate licenses and permits. Ayes: 7; Noes: 1 (Treis)

### **Conditional Use – 2332 N. 124th Street**

The committee reviewed a request by Yan Hua Qiu and Ann Hunter for a Conditional Use in the AA Business District at 2332 N. 124th Street for a Chinese take-out restaurant. Ms. Welch said that the restaurant will be in space previously used by a mortgage company. It meets parking requirements as long as it is take-out only. The owner of a nearby apartment building had been concerned about parking in his lot, but there has been no further contact with him since the Plan Commission meeting.

The applicants were not present. Although there is no code requirement for their presence, Ms. Welch indicated that they were informed of this meeting.

Moved by Ald. Sullivan, seconded by Ald. Krill to hold this matter to the next meeting. Ayes: 8

### **Conditional Use – CBRF at 4473 N. 105th Street**

The request by Dawn Kennison and Naomi Kennison for a Conditional Use in the AA Single Family Residence District at 4473 N. 105th Street for a community based residential facility (CBRF) for up to eight older adults was held from the meeting of April 26, 2005. Ms. Welch noted that this facility is a Conditional Use rather than a Permitted Use because of other CBRF facilities within 2,500 feet and the fact that the CBRF population in this aldermanic district exceeds 1% of the district's population, largely due to the Luther Manor CBRF.

Ms. Welch reported that since the last meeting staff has contacted police, health, and public works regarding various traffic and safety issues. There were no comments or concerns of potential problems. Staff also checked with the state for more detailed information about the proposed facility, but state staff had no record of receiving an application.

Atty. Robert Pledl, 1110 N. 3rd Street, Milwaukee, referred to his May 27, 2005, letter to the committee on behalf of the applicants. He viewed a tape of the previous meeting, understands the questions and concerns, and attempted to respond to all the factual issues. His letter also summarizes the fair housing issue and its application and sets out the applicants' position on the distance and percentage rules. If this committee and the Common Council feel the request does not satisfy all municipal requirements, the applicants ask that it be granted as a reasonable accommodation under disability laws.

Mr. Pledl said that there has been an application to the state to serve persons with developmental disabilities and the elderly, the population the applicants are accustomed to serving. In answer to questions that have been raised about actual size and number, it is felt that the Department of Health and Family Services will ultimately approve serving seven residents. They are still requesting eight or fewer, however, because of the possibility that requirements might change or the department might determine there is sufficient square footage for eight.

Regarding questions on staffing levels, Mr. Pledl said this may refer to sufficient staff or may be a parking concern. There is parking in the garage and driveway, and parking on the street would be rare except for visitors or on holidays. Staffing levels will depend on the residents and will be determined by the Department of Health and Family Services. A group of high-functioning residents that don't need a lot of assistance would still require at least one person at all times. There might be one or two additional personnel for meals or other activities during the day. It seems that city staff feels this would not cause any traffic problems, Mr. Pledl noted.

In response to questions raised about the quality of care at the applicants' West Allis facility, Mr. Pledl said that facility's license has never been in jeopardy. It is the state's job to identify any items that arise during annual surveys or inspections, and all of those items have been addressed. West Allis real estate taxes have now been paid up. There had been an assumption that they had been paid through the mortgage holder.

Mr. Pledl said that the applicants did send out invitations for residents to serve on a community advisory committee but received no response. The state frequently approves CBRFs without formation of an advisory committee because of the difficulty in getting participants when residents are opposed to the facility.

Mr. Pledl said that issues such as proper square footage of a particular bedroom, staff training, and whether the type of individuals served are those allowed by their license are all within the realm of the Department of Health and Family Services. He noted that it is not customary for a municipality to withhold action until the state has licensed a facility. Most find there is no harm in granting a Conditional Use because a facility would not be licensed by the state if problems were identified. He asked that the city move ahead with granting approval.

Ms. Dawn Kennison. stated that an application was forwarded to the state last week. She indicated that she could provide a copy for staff to review. She also later clarified that letters about the community advisory committee were sent to about 21 residents using the city's notification list. Ms. Welch stated that the city notifies residents within 200 feet of a site.

The following residents commented on the proposed Conditional Use:

Pat Pernitz, 4454 N. 104th St.  
Roy Bendler, 4550 N. 101st St.  
Sheila Kelly, 4605 N. 104th St.  
Tom Johnson, 4556 N. 106th St.  
Isabel Jensen, 4704 N. 106th St.  
David Humphrey, 4533 N. 106th St.  
Kathy Dallen, 4454 N. 105th St.  
Maxine Thurner, 9719 W. Ruby Ave.  
Jeff Kamermayer, 3216 N. 94th St.

Dan Starke, 4608 N. 103rd St.  
Cathy Peik, 4545 N. 103rd St.  
Andy Pernitz, 4454 N. 104th St.  
Roger Laesch, 4503 N. 106th St.  
Norb Stephan, 4505 N. 103rd St.  
Marge Brossmann, 4474 N. 105th St.  
Anthony Gaskin, 10301 W. Ruby Ave.  
Dan Frazier, 4506 N. 104th St.  
Tom McAleese, 4617 N. 107th St.

Comments and questions included the following:

- Never received an invitation to a community advisory committee meeting
- Never received notification of the Conditional Use application
- Discouraged by lack of information; applicants could have walked the neighborhood to inform residents
- Concern about part-time employees parking on the street
- No bus service available; would have to walk up Congress to Mayfair Road
- Traffic danger; school traffic; speeding cars
- Why was this neighborhood chosen? What type of people will be served?
- Location is unacceptable; majority in district oppose it; want to keep area family oriented
- Concern that CBRF residents may enter with a particular diagnosis/problem and develop others later
- People could be re-diagnosed when funding runs out resulting in completely different type of patients
- Will this be a temporary or permanent residence for CBRF residents?
- Would residents have any type of criminal history and, once placed, would they stay there if they had a criminal infraction?
- If they converted the garage to a bedroom, that would eliminate a parking space
- Real estate brokers cannot disclose that there is a group home near a listing; disabled are protected class
- What happens if ownership changes in the future; would it come back through this process again?
- Once approved, it seems they can do what they want; looking to Council to protect community
- The number of people who are opposed to the CBRF should carry more weight than subjective items
- Home values could decrease
- Nothing for CBRF residents to do in this neighborhood; no sidewalks
- What happens in case of fire with only one employee there?
- Federal government can overturn the state laws; need to be proactive

- How will resident care be funded?
- Not everyone is opposed; some older residents in this area do currently use the streets safely

Mr. Johnson referred to and provided a copy of information from the American Planning Association's Policy Guide on Community Residences. He summarized statements that clustering of CBRFs defeats the purpose of normalization and integration into the neighborhood, thereby discriminating against the disabled

Ms. Dallen provided a copy of a letter the applicants presented at the first Plan Commission meeting that invites residents to join a community advisory committee. She questioned whether it represents a good faith effort since it does not include place, time, or contact information. She encouraged the applicants to be more proactive in forming an advisory committee since it is required by city ordinance and residents have expressed an interest. She also submitted a copy of a May 26, 2005 Milwaukee Journal Sentinel article on state plans for Medicaid patients. She highlighted a statement that over a two-year period more than 1,400 people are expected to make the transition from nursing homes to residential facilities. She said it is important to gather more data to understand the impacts of CBRFs and be proactive in doing the best for our citizens.

Ms. Dallen also submitted a table of 1999-2002 information that area fire departments sent to the National Fire Incident Reporting System. The data was compiled by WTMJ TV. According to WTMJ, if emergency medical services can resuscitate a person within six minutes, they have a 60% chance of survival. Despite a statement in Mr. Pledl's letter that the need for emergency medical services is not substantial, she stated that there is cause for concern since CBRFs in the 8th District have used those services to a very significant degree. Whether we can provide good care to all citizens needs to be evaluated.

Ms. Dallen further commented that someone could have both primary and secondary diagnoses that impact the amount of care needed and their risk to others. Based on information from the state, the client group in the applicants' West Allis facility includes six or seven emotional and developmental disability categories. She noted that the applicants did not provide the business plan or case plan requested at the previous meeting, which could influence decision making. She commented that the citations on case law that have been provided do not include any cases that address quality of life issues for all citizens along with both the distance and percentage rules.

Mr. Laesch referred to his letter of April 28, 2005 to the committee in which he quoted relevant sections of city ordinances. He noted provisions requiring inspection and review by the state before consideration by the Plan Commission or Common Council, and the need for an owner/operator to first establish a community advisory committee. He also quoted from newspaper articles relating to denial of a planned hospital in Waukesha, noting a statement that a decision should not be based on fear of being sued.

The Chair requested a response on the possibility of housing sex offenders. Ms. Kennison and Mr. Pledl both indicated there is no chance at all. Mr. Pledl said they would be licensed to serve the elderly and people with a primary diagnosis of developmental disability. Residents' ages would start at about 60 or perhaps a little younger. Once a targeted group is defined, it tends to stay that way. If another problem develops, the resident would be moved to another appropriate group home, which is the common practice.

(The committee recessed at 9:20 p.m. and reconvened at 9:30 p.m.)

The Chair asked Mr. Pledl and/or staff to respond to the questions raised tonight..

Mr. Pledl said that it is unlikely that anyone in a CBRF would be permitted to walk five blocks to a bus stop or be out in the neighborhood unsupervised. They would probably rely on the county transit express van for

transportation. He said that this site was chosen because it is a wonderful neighborhood and people tend to want to be in the area where they have lived or have friends and relatives.

The applicants do not need to nor intend to convert the garage to serve the seven people they believe they will be licensed for. They would have to meet the city's building codes for any remodeling they might do, but they do not need to modify anything to obtain approval for seven people. Mr. Pledl acknowledged that they did not supply a business plan, but he noted that it is not required by ordinance and was not requested of other businesses on the agenda tonight. The state would identify any problems during the application process. Payments for CBRF care comes mostly through public funding. Unlike the proposed facility, the applicants' West Allis home is licensed for persons with mental health diagnoses. There is no intention to serve anyone with a criminal history, and it is unlikely that a resident would commit a criminal infraction. If something did occur, the resident would probably not be allowed to stay there.

Regarding the question of emergency medical services, Mr. Pledl said that CBRFs actually have a lower rate of 911 calls than the same residents would have if living independently or semi-independently. Facilities use private ambulance service whenever possible. This question has come up in a number of cases, Mr. Pledl said, and he has never seen a situation where the leading 911 user was a group home. There are requirements in the regulations for a smoke detector system, and staff is present at all times. This type of CBRF serves only those who have demonstrated a given evacuation capacity level. Additional staff would be required if people could not meet those requirements.

Although city ordinance requires a community advisory committee, Mr. Pledl said that the city apparently has allowed facilities with the state signing off on the advisory committee when it does its inspection. The state will decide if a good faith effort was made to form a committee. They do not recommend blanketing a community when sending out notices. The goal is to get just a few people from the neighborhood, which is difficult when people don't want the process to proceed. Mr. Pledl said that anyone who gives their name to him tonight will be on the advisory committee. He asked, however, that the requirement for an advisory committee prior to city action be dispensed with as has been done in the past.

Mr. Pledl said it is ordinarily difficult for an applicant to sue in zoning matters because the burden of proof is on them to show real deviation from the law. In the case of the 2,500 foot or 1% rules, however, the burden is on the municipality when applicants make an initial showing that they will serve people with disabilities.

Studies nationally show that group homes don't impact property values except that an acrimonious process can have a temporary negative effect, which Mr. Pledl termed a self-inflicted injury. Studies have shown that neighbors of group homes don't know they are there or say they don't have any negative effect.

Regarding concerns about traffic and lack of sidewalks, Mr. Pledl commented that young children and elderly persons do currently live in this area. The issue of serving six or seven people who can't live independently or don't choose a nursing home is one of equality. Also, the Common Council does not rule on how the home is set up and can't make a rule that CBRFs can't locate in areas without sidewalks. A developmentally disabled person who is middle-aged will likely remain in a particular CBRF for the rest of his life. Someone in his 60s or 70s will probably stay for years until hospital or nursing care is needed. Regarding the question of someone becoming dangerous, he said that CBRFs are set up to provide a certain level of services, so a person would have to be moved to a different type of facility if their condition is beyond the designated level. He is not familiar with any cases of an elderly person becoming dangerous to others, but police would be called when necessary and the Department of Health and Family Services would also investigate.

Mr. Pledl said that virtually all CBRF care is funded through government payments such as Social Security or county programs, with only a few self-pays. CBRF providers receive monthly checks, but their returns have been decreasing because of governmental budgetary problems.

Asked to clarify whether someone is now occupying the home, Ms. Kennison said it is her family home right now and the person seen in a wheel chair is a family member.

In response to a question about placement of the speed trailer in the area recently, Chief Weber said it was probably placed in response to a complaint about speed. It does slow people down for awhile, but controlling speed is an ongoing process. He noted that the use of radar often ends up catching more neighborhood residents than others.

Ms. Welch responded to concerns about clustering, indicating familiarity with the document presented by Mr. Johnson. The difficulty, she said, is that there is not any definition of how much is too much. The 2,500-foot rule allows the city to give an application additional scrutiny. Mr. Kesner added that he has not found any court cases that have said a certain level is too much or said that it has reached a level that affects property values. Mr. Pledl said that courts have thrown out a 1,000-foot distance rule, finding it to be onerous. Wisconsin's 2,500-foot rule is the greatest distance that was ever chosen. In the Milwaukee case involving a site on Menomonee River Parkway, the federal court determined that two houses 358 feet apart have to be allowed.

Mr. Kesner said that if there is a change in the nature of clients served or a change in ownership other than something technical like a corporate name change, new Conditional Use approval following the same process would be required. Regarding the timing of city approval and state inspection, he said that the facility can't open without an inspection, which is part of the licensing process. The ordinance requirement for that inspection prior to city approval may not have ever been enforced in the past and might well overstep the city's zoning powers.

Ald. Sullivan spoke of the Council's authority to make decisions based on the health, safety, and well being of the community and the need to not make decisions based upon fear of what might or might not happen. He said he is not just looking at the 2,500-foot rule but also the percentage rule and the impact on legitimate zoning factors.

Ald. Birschel reported on his review of state statutes relating to CBRFs, citing concerns relating to sections on staffing, training, and patient history. Mr. Kesner said that the concerns mentioned are legitimate but are regulatory issues outside of the city's scope of consideration under zoning powers. We can place specific conditions for compliance with state law but can't use lack of specific training, for example, as a reason for denial.

Ald. Becker spoke of the need for common sense in siting CBRFs, commenting that it always seems to be a case of "not in my backyard." It also has to be reasonable to the federal courts, he noted.

Ald. Krol commented on the need to follow city ordinances regarding an advisory committee and state inspection prior to city approval.

Mr. Kesner said he would like to respond to some of the committee's concerns in closed session, which is allowed under open meeting law for discussion with legal counsel if there is a potential for litigation. Normally, a closed session must be pre-announced and described in detail on the agenda, but there is some provision for convening into closed session when relevant matters arise. The Chair suggested hearing other comments from committee members before considering a closed session.

Ald. Treis told of past problems with several group homes and a CBRF for young people, all of which eventually closed. He expressed some concern about knowing the quality of care in a CBRF of the type proposed compared to that at facilities such as San Camillo and Luther Manor, which are contained within larger facilities with many levels of care. He felt that there are many ambiguities and more information is needed.

Ald. Sullivan said there is probably a place in the market for this type of facility, but the type of program offered or specific quality issues of one facility versus another would not be decision making factors. His concern is whether it fits into our zoning parameters and whether review is timely at this point.

The Chair thanked residents present for coming tonight. He commented that this was productive in raising appropriate issues, getting guidance, and getting the education process started. He mentioned the need to stay focused on zoning issues and avoid those under the state's jurisdiction. More information was requested from the applicants five weeks ago; but added information first arrived last Friday afternoon and was not as complete as desired and didn't allow time for evaluation. Additional information is still needed such as an operational plan giving some idea of what accommodation is requested in order to determine if there are any undue burdens or any conditions that should be placed on potential approval. Holding this item could allow time for inquiries with the state about whether a preliminary inspection is feasible or appropriate at this time and also time to form a community advisory committee, although those ordinance requirements may be superseded by federal law.

Moved by Ald. Sullivan, seconded by Ald. Birschel to convene into closed session per Wis. Stat. 19.85(1)(g): Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved; with the option of reconvening in open session. Ayes: 8

(Ald. Subotich excused. -7)

Committee convened into closed session at 10:48 p.m. and reconvened in open session at 11:12 p.m.

Moved by Ald. Sullivan, seconded by Ald. Krill to hold this matter for a period of two weeks so that committee members can obtain further input from staff on issues that arose in the course of the meeting. Ayes: 7

The Chair announced that this matter will be back before the committee at their meeting at 8 p.m. on June 14.

### **Annual Festival at Annunciation Greek Orthodox Church**

Chief Weber reviewed some of the problems that occurred at last year's annual festival at Annunciation Greek Orthodox Church, 9400 W. Congress Street, mostly involving a younger crowd that became disorderly. Wauwatosa and Milwaukee police and county sheriff personnel worked together to restore peace. Meetings have taken place since that time with the Mayor, City Administrator, Wauwatosa and Milwaukee aldermen, and representatives of the Milwaukee Police Department and Annunciation Church to ensure the safety and success of this year's festival, scheduled for July 7-10.

Lt. Weiss distributed a summary and discussed changes being made for this year's event, as follows:

Festival hours: 5-9 p.m. on Thursday, July 7; 4-10 p.m. Friday, July 8th; Noon-10 p.m. Saturday, July 9th; and Noon-8 p.m. Sunday, July 10th

Advertising/Name: The festival will be known and advertised as the Annunciation Greek Orthodox Church 40th Annual Family Festival

Parking: There will be additional handicapped parking on concrete portions of the festival grounds.

Clean-Up: There will be additional emphasis on neighborhood cleanup in adjoining Wauwatosa and Milwaukee neighborhoods after each night of the festival

Contacts: Names and numbers of key contacts will be provided, including police, district alderpersons, and festival officials.

Midway: Midway rides and games will be relocated to the northeast corner of the grounds. The area will be fenced in and will have two entry and exit points, both monitored by Wauwatosa officers. Ticket sales will stop each day at 6 p.m., and rides will stop at 7 p.m. and the area cleared. Signs will be placed throughout the grounds to advertise midway hours, and announcements will also be made.

Police Cooperation: The Wauwatosa and Milwaukee departments will be in continuous contact with each other during the entire festival. The same supervisor from each department will be on duty each of the four evenings of the festival.

Command Post and Personnel: Wauwatosa police will maintain a command post at the church's cultural center that will be staffed at all times. There will be an increase in police staffing levels over 2004.

Lt. Weiss said that 95% of the problems last year were related to the midway. Metal detectors will be available for use as needed. He noted that the festival reimburses Wauwatosa for all related costs.

Ald. Sullivan asked about the ability to communicate quickly and make on-the-spot decisions in response to tactics used by festival goers. Chief Weber said that police will be able to react more quickly, and those who violate the posted rules will be removed from the scene. Lt. Weiss added that there will be "zero tolerance" in enforcing disorderly conduct violations.

Ald. Maher commended the Wauwatosa and Milwaukee Police Departments for their efforts and asked about possible mounted patrols. Lt. Weiss said that the Milwaukee police mounted patrol was there on Saturday and Sunday evening last year, but this year they are dedicated to Summerfest, which takes place during this time. It has not yet been determined if the county sheriff's mounted patrol would be available.

Ald. Maher asked about cutting off beer sales at least a half-hour before shutdown. Chief Weber indicated that that measure wasn't discussed inasmuch as the problems haven't been alcohol related.

The meeting adjourned at 11:30 p.m.

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Carla A. Ledesma, City Clerk  
Wauwatosa, Wisconsin